

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND DIVISION

ALICIA SWINNEY McCracken,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 7:20-cv-00289
	§	
TRANSAMERICA LIFE INSURANCE	§	
COMPANY	§	
Defendant.	§	

**DEFENDANT TRANSAMERICA LIFE INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

Defendant Transamerica Life Insurance Company ("Transamerica"), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes the above-captioned action pending in the 70<sup>th</sup> District Court, Ector County, State of Texas, to the United States District Court for the Western District of Texas, Midland Division.

1. Plaintiff commenced this action entitled *Alicia Swinney McCracken v. Transamerica Life Insurance Company*, Cause No. A-20-11-1192-CV (the "Action"), by filing Plaintiff's Original Petition with the District Court of the 70<sup>th</sup> Judicial District, Ector County, State of Texas (the "Original Petition"), on November 20, 2020. *See* Ex. 1. Plaintiff did not serve Defendant with her Original Petition but instead filed her First Amended Petition on November 20, 2020 (the "Amended Petition") and later served Transamerica with the Amended Petition. *See* Ex. 2.

2. Pursuant to 28 U.S.C. § 1446(a), Transamerica has attached to this Notice of Removal an index of all matters being filed with this Notice of Removal, which includes the following documents:

**Exhibit 1:** Plaintiff's Original Petition

**Exhibit 2:** Plaintiff's First Amended Petition

**Exhibit 3:** Return of Service on Transamerica Life Insurance Company

**Exhibit 4:** Defendant Transamerica Life Insurance Company's Original Answer

**Exhibit 5:** Docket Sheet

**Exhibit 6:** List of counsel of Record

3. As of the date of removal, there are no motions or hearings pending before the state court in this matter.

4. Accordingly, and as set forth more fully below, this case is properly removed to this Court under 28 U.S.C. §§ 1332, 1441, and 1446 because Transamerica has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction under 28 U.S.C. § 1332.

**I. Transamerica Has Satisfied The Procedural Requirements For Removal.**

5. Plaintiff served the Amended Petition on Transamerica on November 30, 2020. *See* Ex. 3. This was the first and only pleading that Transamerica was served with in this matter. Because this Notice of Removal is being filed within thirty days of service of the Amended Petition on Transamerica, it is timely under 28 U.S.C. § 1446(b)(2)(B).

6. Under 28 U.S.C. § 1446(a), the United States District Court for the Western District of Texas, Midland Division, is the appropriate court for filing this Notice of Removal from a court in Ector County, Texas, where the Action is pending. *See* 28 U.S.C. § 124(b)(7).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1441(a) and 1391(b).

**II. Removal is Proper Because This Court Has Subject Matter Jurisdiction Under 28 U.S.C. § 1332.**

8. This Court has original jurisdiction over this action under the diversity of citizenship provision contained in 28 U.S.C. § 1332(a) because this is a civil action (A) where

the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (B) is between citizens of different states. Thus, the Action may be removed to this Court by Transamerica pursuant to 28 U.S.C. § 1441(a).

**A. The amount in controversy requirement is satisfied.**

9. Plaintiff's Amended Petition specifically alleges that she seeks the entire amount due under the insurance policy at issue, \$750,000. Ex. 2, ¶¶ 7,10,12. Plaintiff also requests \$750,000 in her pre-suit demand letter attached to her Amended Petition. Ex. 2. Thus, the amount in controversy exceeds the sum or value of \$75,000.

**B. Complete diversity of citizenship exists between Plaintiff and Defendant.**

10. Plaintiff is a citizen of Ector County, Texas. For purposes of determining diversity jurisdiction, Plaintiff is therefore a citizen of Texas.

11. Transamerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. Thus, Transamerica is a citizen of Iowa for purposes of determining diversity jurisdiction.

12. Because none of the parties to this action are citizens of the same state and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441(a) and (b).

**V. CONCLUSION**

This Court has jurisdiction over this action under 28 U.S.C. § 1332 in that there is diversity of citizenship between all parties in interest and the value of the matter in controversy exceeds \$75,000, exclusive of interest and costs. This action was timely and properly removed to federal court. For these reasons, removal of this action is proper.

Respectfully submitted,

**WINSTEAD PC**

By: /s/ Jason R. Bernhardt  
Jason R. Bernhardt  
State Bar No. 24045488  
[jbernhardt@winstead.com](mailto:jbernhardt@winstead.com)  
Katie Banks  
State Bar No. 241092114  
[kbanks@winstead.com](mailto:kbanks@winstead.com)  
600 Travis, Suite 5200  
Houston, Texas 77002  
(713) 650-8400 – Telephone  
(713) 650-2400 -- Facsimile

**ATTORNEYS FOR DEFENDANT TRANSAMERICA  
LIFE INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Jason R. Bernhardt  
Jason R. Bernhardt